IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. CRIMINAL APPEAL NO.96/2002

1. Bantilal S/o Shri Babulal Bairwa
2. Durgalal S/o Shri Shreelal Dhakar
...Accused-Appellants
Versus
State of Rajasthan through P.P.
...Respondent

2. S.B. CRIMINAL APPEAL NO.42/2002

Bhojraj S/o Onkarlal Gujar
...Accused-Appellant
Versus
State of Rajasthan through P.P.
...Respondent

Date of Judgment ::: 4th April, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri Shiv Charan Gupta, Counsel for the appellants in Criminal Appeal No.96/2002
Shri Prithviraj Singh Rajawat, Counsel for the appellant in Criminal Appeal No.42/2002
Smt. Nirmala Sharma, P.P., for the State

By the Court:-

These two appeals - one on behalf of accused Bantilal S/o Shri Babulal Bairwa and Durgalal S/o Shri Shreelal Dhakar and, another on behalf of Bhojraj S/o Onkarlal Gujar, are directed against the common judgment dated 14.12.2001 passed by the Additional Sessions Judge No.2. (Fast Track) Kota, in Sessions

Case No.95/2001, therefore, both the appeals are being disposed of by this common order.

The trial court has convicted and sentenced the appellants as under:-

Accused	***Under Sections***		
	363, IPC	366, IPC	376, IPC
Bantilal	To undergo three years rigorous imprisonment and a fine of Rs.500/-; in default of payment of fine, to further undergo two months additional simple imprisonment.	To undergo seven years rigorous imprisonment and a fine of Rs.1000/-; in default of payment of fine, to further undergo three months additional simple imprisonment.	To undergo ten years rigorous imprisonment and a fine of Rs.2,000/-; in default of payment of fine, to further undergo six months additional simple imprisonment.
Durgalal	-do-	-do-	-do-
Bhojraj	-do-	-do-	Acquitted

Exhibit P-1, a written-report, was lodged by PW-2 Balchand, the father of prosecutrix Maya, at Police Station Kaithoon, District Kota, wherein it was mentioned that he was not present at his home on 5.3.2001 and when he came back, his daughter Maya was found missing. He lodged a report in this regard. It was further mentioned that today i.e. 7th March, 2001, he came to know that Bantilal, Durgalal and Bhojraj have abducted his daughter Maya.

Maya was recovered on 9.3.2001 vide Exhibit P-3. The accused-persons – Bantilal and Durgalal, were arrested on 9.3.2001 vide Exhibit P-5 and Exhibit P-6,

respectively. Maya was medically examined and her medical-report is Exhibit P-4.

After completion of investigation, the police filed a charge-sheet against all the three accused-appellants. The trial court framed charge against all the accused-appellants under Sections 363, 366 and 376, IPC.

The learned trial court, after considering the evidence on the record, acquitted the accused-appellant Bhojraj from the offence under Section 376, IPC, and convicted and sentenced all the three appellants as mentioned above.

Shri Shiv Charan Gupta, the learned counsel for accused-appellants Bantilal and Durgalal, did not challenge the conviction of both the accused-appellants passed by the trial court in view of the statements of prosecutrix Maya (PW-1), her father Balchand (PW-2), mother Ladbai (PW-4) and Kishan (PW-8), and contended that both the accused-persons have already remained in jail for about 5 years 4 months and 20 days and, in case the period of remission is counted then it comes to around 7 years 2 months and 15 days, therefore, their sentence of imprisonment may be reduced to a period of sentence of imprisonment already undergone by them.

I have examined the statements of Maya (PW-1), Balchand (PW-2), Ladbai (PW-4) and Kishan (PW-8), and also the written-report (Exhibit P-1) and the medical-report of the prosecutrix, and, after considering the same, I find that the learned trial court has rightly convicted the accused Bantilal and Durgalal for the above offences and their learned counsel rightly did not press their appeals on merits.

So far as the third accused Bhojraj is concerned, his learned counsel, Shri Prithviraj Singh Rajawat, contended that the learned trial court has committed an illegality in convicting and sentencing the accused Bhojraj, whereas from the prosecution evidence it was clear that no offence was committed by him and the charges framed against him by the trial court were not proved therefrom. He referred the statements of Maya (PW-1), Balchand (PW-2), Ladbai (PW-4) and Kishan (PW-8), and contended that a court-question was put to Maya (PW-1) at the end of her statement and while answering thereto she categorically admitted that accused Bhojraj did not commit any offence with her. PW-2 Balchand, the father of Maya, stated that he came to know about the accused-persons from his wife Ladbai (PW-4), who, in her statement, stated that she saw running three

persons and she identified Bantilal and Durgalal, but she did not name Bhojraj. PW-8 Kishan also took the name of Bantilal and Durgalal but he also did not name Bhojraj.

The learned Public Prosecutor supported the judgment of the learned trial court and contended that Bhojraj has also committed the offence and no interference should be made in the finding of the trial court.

I have considered the submissions of the learned counsel for both the parties in respect of accused Bhojraj.

In Exhibit P-1, the written-report, names of all the three persons were mentioned. PW-1 Maya, in her examination-in-chief, also took the name of three persons including Bhojraj, but, in her cross-examination, she admitted in the first line itself that it is correct that Bhojraj did not do anything with her. After completion of cross-examination, a court-question was put to her and while answering thereto she stated that it is correct that earlier she gave a false statement against Bhojraj and, in fact, Bhojraj did not commit any offence with her. PW-2 Balchand stated that his wife told him that these three accused-persons abducted their daughter,

therefore, he is not an eye-witness. PW-4 Ladbai stated that she saw three persons running but she identified only Bantilal and Durgalal, and she could not identify the third person meaning thereby she did not take the name of Bhojraj.

Another important witness is Kishan (PW-8), who also stated that Bantilal and Durgalal abducted Maya and he did not take the name of Bhojraj.

I have also considered the impugned judgment passed by the trial court and I find that the learned trial court has not discussed the prosecution evidence specifically with reference to accused Bhojraj and no specific finding has been given about commission of offence by accused Bhojraj. The only reference in respect of Bhojraj by the trial court has been given while passing the order of conviction.

It is also relevant to mention that the learned trial court has acquitted all the accused-persons under Section 366-A, IPC. The accused Bhojraj has also been acquitted for the offence under Section 376, IPC, by the trial court itself.

After considering the statements of material and relevant witnesses i.e. Maya (PW-1), Balchand (PW-2), Ladbai (PW-4) and Kishan (PW-8), I find that the prosecution has failed to prove the case against the

accused Bhojraj and the learned trial court has committed an illegality in convicting and sentencing him under Sections 363 and 366, IPC. The accused-appellant Bhojraj is, therefore, entitled to the benefit of doubt and he is liable to be acquitted.

So far as the submission of Shri Shiv Charan Gupta, the learned counsel for accused-appellants Bantilal and Durgalal, for reduction of their sentence of imprisonment is concerned, it is correct that they have already remained in jail for about 5 years 4 months and 20 days. From the statement of PW-1 Maya, it also appears that it was a case of consent, but, looking to her age, the same becomes irrelevant, however, that fact is certainly relevant for the purpose of reduction of sentence.

Under sub-section (1) of Section 376 IPC the minimum sentence of seven years is prescribed but it is subject to proviso that the court may, for adequate and special reasons, impose a sentence of imprisonment for a term of less than seven years.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of

five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

In Ram Kumar Vs. State of Haryana – (2006) 4 SCC 347, their Lordships of the Hon'ble Apex Court reduced the sentence of seven years under Section 376, IPC, to a period of three years imprisonment. Para No.3 of the judgment reads as under:-

> "3. The appellant, aggrieved by the order passed by the High Court has filed the above appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both the Sessions Court as well as the judgment passed by the High Court. The learned counsel for the appellant drew our attention to the statement of the girl Bimla (PW-5) and also drew our attention to the evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has

> now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly."

In the case of State of Chhattisgarh Vs. Lekhram (2006) 5 SCC 736 the Hon'ble Apex Court reduced the minimum sentence under Section 376, IPC, of seven years to a sentence of one-and-half-year imprisonment, already undergone by accused therein. Para 16 of the judgment reads as under:-

> "16. The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the

> question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the facts that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the appellant back to prison."

After considering all the facts and circumstances of the present case and the judgment of the Hon'ble Apex Court, as referred above, I am of the view that ends of justice will meet in case the sentence of accused Bantilal and Durgalal under Section 376, IPC, is reduced to a period of 7 years rigorous imprisonment.

Consequently, the appeal of Bhojraj is allowed

and his conviction and sentence passed by the trial court is set-aside. He is acquitted from the charges levelled against him. He is on bail and he needs not to surrender and his bail-bonds are discharged.

The appeal of accused Bantilal and Durgalal is partly allowed. Their conviction and sentence under Sections 363 and 366, IPC, is maintained, but, while maintaining their conviction under Section 376, IPC, their sentence under the said offence is reduced to a period of 7 years rigorous imprisonment.

(Narendra Kumar Jain) J.

//Jaiman//